

June 25, 2019
Wilmington, Delaware


CONNOLLY, U.S. District Judge:

I. INTRODUCTION

Plaintiff Chaz A. Smith ("Plaintiff"), an inmate at the Howard R. Young Correctional Institution ("HRYCI") in Wilmington, Delaware, filed this action pursuant to 42 U.S.C. § 1983¹ against Defendant Connections CSP Inc. ("Defendant"). (D.I. 3) Plaintiff appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 4) The Court proceeds to review and screen the matter pursuant to 28 U.S.C. § 1915(e)(2)(b) and § 1915A(a).

II. BACKGROUND

Plaintiff alleges that in early January 2017, he developed a blister on his elbow and by February it had burst and become an open sore. (D.I. 3 at 6) A nurse provided him treatment after he had made seven requests for medical attention. (*Id.*) His condition continued to worsen despite six weeks of treatment. (*Id.*)

In June 2017, after a lab culture was performed, Plaintiff was diagnosed with MERSA. (*Id.*) Plaintiff was prescribed an antibiotic regimen. (*Id.*) He alleges that medical mismanaged the doses he was prescribed and administered less than prescribed doses. (*Id.*) In July 2017, Plaintiff was sent to the hospital for treatment and surgery was performed. (*Id.*) He alleges the surgeon told him that Defendant's staff had failed to properly treat the condition.

After a seven day hospital stay, Plaintiff returned to the HRYCI and started a six week antibiotic regimen via a PICC line. (*Id.*) On August 1, 2017, Plaintiff developed a

¹ When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

fever and chills. (*Id.*) Medical staff administered a different antibiotic. (*Id.*) Plaintiff alleges it was not properly administered because medical staff had difficulty getting the IV machine to operate properly. (*Id.*) He alleges that medical staff failed to follow his surgeon's instruction to properly care for the PICC line and, particularly, that medical staff refused to clean the area around the PICC line or replace bandages in timely manner. (*Id.*) Plaintiff alleges that medical staff allowed 21 days to pass when the procedure calls for bandage replacements no more than seven days apart. (*Id.*)

Plaintiff alleges that due to negligence, he has lost 25 percent use of his right arm strength from the surgical bone removal. (*Id.*) He seeks compensatory damages in the sum of one million dollars resulting from Connections' negligence. (*Id.* at 9)

III. LEGAL STANDARDS

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) if "the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief." *Ball v. Famiglio*, 726 F.3d 448, 452 (3d Cir. 2013); see also 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions); 28 U.S.C. § 1915A (actions in which prisoner seeks redress from a governmental defendant); 42 U.S.C. § 1997e (prisoner actions brought with respect to prison conditions). The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. See *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because Plaintiff proceeds *pro se*, his pleading is liberally construed and his

Complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson*, 551 U.S. at 94 (citations omitted).

An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i) and § 1915A(b)(1), a court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 U.S. at 327-28; *see also Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate’s pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) and § 1915A(b)(1) is identical to the legal standard used when deciding Rule 12(b)(6) motions. *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief can be granted pursuant to the screening provisions of 28 U.S.C. §§ 1915 and 1915A, the Court must grant a plaintiff leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A complaint may be dismissed only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court concludes that those allegations “could not raise a claim of entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Though “detailed factual allegations”

are not required, a complaint must do more than simply provide “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Davis v. Abington Mem’l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (internal quotation marks omitted). In addition, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. See *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 315 (3d Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Twombly*, 550 U.S. at 570). Finally, a plaintiff must plead facts sufficient to show that a claim has substantive plausibility. See *Johnson v. City of Shelby*, 574 U.S. 10 (2014). A complaint may not be dismissed for imperfect statements of the legal theory supporting the claim asserted. See *id.* at 10.

A court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) assume the veracity of any well-pleaded factual allegations and then determine whether those allegations plausibly give rise to an entitlement to relief. *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016) (internal citations and quotations omitted). Elements are sufficiently alleged when the facts in the complaint “show” that the plaintiff is entitled to relief. *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

IV. DISCUSSION

Dismissal is appropriate because Plaintiff’s claims do not rise to the level of a constitutional violation. The Eighth Amendment proscription against cruel and unusual

punishment requires that prison officials provide inmates with adequate medical care. *Estelle v. Gamble*, 429 U.S. 97, 103-105 (1976). “[P]rison authorities are accorded considerable latitude in the diagnosis and treatment of prisoners.” *Durmer v. O’Carroll*, 991 F.2d 64, 67 (3d Cir. 1993). Although “[a]cts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs” constitute cruel and unusual punishment under the Constitution, *Estelle v. Gamble*, 429 U.S. at 106, merely negligent treatment does not give rise to a constitutional violation, *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004). Indeed, “[a]llegations of medical malpractice are not sufficient to establish a Constitutional violation,” nor is “[m]ere disagreement as to the proper medical treatment.” *Spruill*, 372 F.3d at 235.

The allegations indicate that Plaintiff was treated throughout 2017, he was sent to an outside medical provider, underwent surgery, and was seen by medical personnel who administered care. Plaintiff was ultimately diagnosed with MERSA. Because the allegations indicate that Plaintiff received treatment (including surgery), even if he disagrees with the treatment, the allegations amount to “mere disagreement as to the proper medical treatment,” and they are insufficient to state a plausible constitutional violation. *Id.* (quotation marks omitted); *see also Norris v. Frame*, 585 F.2d 1183, 1186 (3d Cir. 1978) (“Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim.”) (quotation marks omitted).

Even when reading the Complaint in the most favorable light to Plaintiff, he fails to state an actionable constitutional claim against Defendant for deliberate indifference to a serious medical need. At most, the allegations fall under the aegis of a medical

malpractice/negligence claim, rather than deliberate indifference to a serious medical need. Accordingly, the Complaint will be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and § 1915A(b)(1).

V. CONCLUSION

For the above reasons, the Court will dismiss the Complaint as legally frivolous pursuant 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1). Amendment is futile.

An appropriate order will be entered.